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10/774,339

02/06/2004

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60,137-207;136-3032-U

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,339
Filing Date: February 06, 2004
Appellant(s): HELMETSIE ET AL.

Matthew L. Koziarz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/06/2007 appealing from the Office action mailed 12/21/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,036,184	Armstrong	04-1936
4,718,131	Kitamura et al	01-1988

4,886,236

Randall

12-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 14-15, 18-19, 21-24 stand rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (2,036,184).

Regarding claim 19, the Armstrong reference discloses a surround comprising a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the meeting portions of the walls including member 1) engaged with the base portion, the first wall portion and the second wall portion, the corner portion comprising a multiple of horizontal shelf slots (between members 8,9,10) arranged vertically along a length of the corner portion, wherein the horizontal shelf slots comprise at least partially arcuate openings in the corner portion to support a corresponding multiple of shelves.

The introductory statement of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the device of Armstrong which is capable of being used in a bathroom or shower surround.

Regarding to claim 21, at least one of the partially arcuate openings is defined by an upper wall portion 8, a lower wall portion 9 and an arcuate rear wall portion 1.

Regarding claim 22, one of the partially arcuate openings includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the partially arcuate openings is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion, the upper wall portion 8, the lower wall portion 9, the arcuate rear wall portion 1 comprise a single continuous piece.

2. Claims 13-15, 18-19 and 21-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al (4,718,131) in view of Randall (4,886,236).

Regarding claim 19, the Kitamura et al reference discloses a shower surround comprising a base portion R2; a first wall portion r1; a second wall portion r2; and a corner portion R1 engaged with the base portion R2, the first wall portion r1 and the second wall portion r2, the corner portion R1 comprising a multiple of horizontal shelves 29b and 29c removably arranged vertically along a length of the corner portion (Fig. 13), wherein pins 30 in the corner portion R1 support the shelves.

Although the Kitamura et al reference does not disclose partially arcuate openings in the corner for supporting the shelves, attention is directed to the Randall reference which teaches supporting means for securing a shelf to a wall comprising a bracket 25 having a first arm 33 and a second arm 35 and an arcuate opening 27 therebetween to support a shelf.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute brackets for the pins of the Kitamura et al shelves in view of the teaching of the Randall reference for supporting the shelves in the corner wall, wherein so doing would amount to a mere substitution of one functional

equivalent supporting means for another within the same art that would work equally well in the Kitamura et al shower device.

Regarding claim 13, at least two support brackets 25, which are needed on sides on the shelf unit of Kitamura et al, with opening 27 would constitute segmented slots. Regarding to claim 21, at least one of the partially arcuate openings is defined by an upper wall portion 8, a lower wall portion 9 and an arcuate rear wall portion 1.

Regarding to claim 21, at least one of the partially arcuate openings 27 is defined by an upper wall portion 33, a lower wall portion 35 and an arcuate rear wall portion 29.

Regarding claim 22, one of the partially arcuate openings 27 includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the partially arcuate openings is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion R1, the upper wall portion 33, the lower wall portion 35, the arcuate rear wall portion 39 comprise a single continuous piece (after being assembled together).

(10) Response to Argument

Appellant argues with respect to claim 19 that the figures in Armstrong do not show enough detail to support the openings being at least partially arcuate as claimed. Examiner disagrees with appellant. Figs. 1 and 4 in Armstrong show openings between members 8, 9 10 for supporting shelves 18 and 19 being at least partially arcuate at the front edges due to the curved surfaces of members 8, 9 and 10.

Appellant argues with respect to claim 22 that the figures in Armstrong do not show enough detail to support the openings having a uniform nominal depth extending into the corner portion as claimed. Examiner disagrees with appellant. Fig 3 in Armstrong clearly shows openings between members 8, 9 10 for supporting shelves 18 and 19 having a uniform depth extending into the corner.

Appellant argues that Armstrong describes the elements 8 and 9 being separate pieces that are secured to the bracket 1 using screws and therefore, these elements are not a single continuous piece as claimed. Examiner disagrees with appellant. Since the claim does not specifically recite "a single, continuous piece" of all wall and base portions being unseparated and Fig. 1 shows separate wall and base portions assembled together, all members in Armstrong after being assembled together meet the claimed limitation as "a single, continuous piece".

Appellant argues with respect to claims 14-15 that the Armstrong reference does not disclose the claimed features. Examiner disagrees with appellant. Shelves 18 and 19 are removable and have a "snap-in" interface as claimed.

Art Unit: 3751

Appellant argues with respect to the combination of Kitamura et al and Randall that one of ordinary skill in the art would not substitute the bracket of Randall for the pins of Kitamura because the brackets would involve a more complex assembly. Examiner finds the arguments not persuasive. The complexity of one equivalent device does not deter one of ordinary skill from the application of the prima facie case of obviousness. Kitamura et al teaches a pin-typed shelf supporting structure. Randall teaches a bracket-typed supporting structure. It would have been obvious to one of ordinary skill to substitute the bracket of Randall for the pins of Kitamura because the combination of the references would produce an expected and predictable result.

Appellant argues that proposed combination does not suggest a multiple of horizontal shelf slots arranged vertically along the length of the cover portion as claimed. Examiner disagrees with appellant. A multiple of brackets for supporting shelves 29b and 29c would include multiples shelf slots arranged vertically along the corner portion as shown in Fig. 13 of Kitamura.

Regarding appellant's arguments with respect to claim 18 that the brackets of Randall were incorporated into the shower surround of Kitamura as proposed, the screws 32 used to secure the brackets to the wall would penetrate through the wall and provide a path for water leakage into the wall cavity, and thus one of ordinary skill in the art would not be motivated to make the proposed combination. Examiner finds the arguments not persuasive. With the way the screws are hidden inside a cavity of the bracket 11 as shown in Figs. 1, 3 and 4, hardly any water (if any) can slip through.

Art Unit: 3751


Appellant argues with respect to claim 24 that the pieces R1, 33, 35 and the wall portion 29 would not be continuous as claimed because there would be a discontinuity or interruption at the interface between the bracket 25 and the corner portion R1. Examiner disagrees with appellant. There is clear no evidence according to the drawings and specification of the present application to show the continuous piece of the assemble wall portions 24,26 , corner portion 38 and base portion 22 have no discontinuity or interruption at the interface. Appellant has read more material into the claim than what has been actually claimed. The pieces R1, 33, 35 and the wall portion 29 after assembled together would be as much as "continuous" as claimed.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

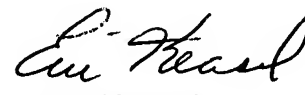
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,


Huyen Le

Conferees:


Gregory Huson


Eric Keasel